IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 17018 of 2004

Between:

Sri Ambati Phatima Marreddy S/o.Pedda Marreddy
R/o. Rentachintala, Guntur District Licence of M/s Neelima Wines

... PETITIONER

AND

1 The Commissioner for Prohibition and Excise Hyderabad.
2 The Prohibition and Excise Superintendent Guntur.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the action of the 1st respondents in rejecting the claim of the petitioner for refund of excess licence fee paid towards IL 24 (B) Licence for the excise year 2003-04 by his Proceedings in Cr.No.14716/04/CPE/G2 dated 9.9.2004 as illegal arbitrary and consequently direct the respondents to refund the excess licence fee collected towards grant of IL 24 (B) licence for the excise year 2003-04.

Counsel for the Petitioner: MR.A.JAGANNATHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following order:

ORDER:

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Heard both the counsel appearing for the respective parties.

Petitioner was granted IL 24 (B) licence for the excise year 1998-99 under the name and style of M/s. Neelima Wines, Rentachintala, Guntur District, which was renewed from time to time. Pursuant to the amendments to the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 (for short 'the Rules') vide G.O.Ms.No.283, Revenue (Excise-II) dated 28.05.2002, the Government proposed to issue IL 24 (B) (permit room) licences to the existing IL 24 licences for consumption of liquor in the permit room/licenced premises during the excise year 2003-04.

Petitioner filed an application for grant of IL 24 (B) licence by paying the licence fee of Rs.75,000/- vide Challan No.27 dated 03.04.2003 at S.T.Rentachintala and submitted the challan in original immediately. The said application was received on 28.11.2003 and after due verification and enquiry the licence was issued on 05.12.2003.

It is stated that under Rule 25 (9) (i) of the Rules only the proportionate licence fee has to be collected from the beginning of the month in which the licence is granted till the end of the excise year but not in respect of the months prior to the issuance of the licence.

No doubt, as per Rule 25 (9) of the Rules the annual licence fee in respect of IL 24 (B) has to be paid in advance before the commencement of the year in lumpsum or in three equal installments. But as per proviso 1 to Rule 25 (9) of the Rules where the licence is granted during the month in a lease year, the licence fee shall be proportionately collected from first of the month in which the licence is granted. For example, if the licence is granted in the month of May, the licence fee payable shall be for eleven months of the annual licence fee of that year i.e., from 1st may to the succeeding year up to 31st March. Even if the licence is granted on 25th May the licence fee has to be collected from 1st May.

In the instant case, the licence was granted on 05.12.2003 and therefore, the licence fee payable by the petitioner is only from 01.12.2003 to 31.03.2004. But the request of the petitioner for refund of excess licence fee, which he paid for the entire year, was rejected on the ground that there is no provision in the Act to refund the amount remitted by the petitioner under licence fee without any rejection.

It is stated in the counter that the under Rule 25 (7) of the Rules where a licence issued is rejected then only the excess licence fee is liable to be refunded but there is no provision for refund of excess licence fee in the absence of any rejection orders.

Law itself prescribes collection of licence fee proportionately from the first day of the month during which the licence is granted till the end of the excise year and, therefore, the respondents are not authorized to retain the excess licence fee which was paid by the petitioner for the period during which the licence was granted.

Therefore, I am of the view that the petitioner is entitled for the proportionate refund of the excess licence fee from 01.04.2003 to 30.11.2003. The same view has been taken by this Court in W.P.No.15046 of 2000 dated 03.01.2003 in the case of **Md. RAJMOHAMMAD v. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT.**

Accordingly, the writ petition is allowed directing the respondents to refund the proportionate

excess licence fee paid by the petitioner in respect of IL 24 (B) licence for the period from 01.04.2003 to 30.11.2003 and retain the licence fee from 01.12.2003 to 31.03.2004. No costs.

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V. ESWARAIAH, J

April 25, 2005

Dsk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this

Monday the Twenty Fifth Day of April Two Thousand and Five.

To

1 The Commissioner for Prohibition and Excise Hyderabad.
2 The Prohibition and Excise Superintendent Guntur.

3 Two CCs to GP For Prohibition & Excise, High Court Buildings, Hyderabad

(OUT)

Two CD Copies.